

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

GRAFTON AND UPTON RAILROAD
COMPANY,

Plaintiff,

v.

TOWN OF MILFORD,

Defendant

C.A. No.: 03-40291-NMG

MOTION OF THE DEFENDANT TOWN OF MILFORD
FOR
SUMMARY JUDGMENT

The Defendant, Town of Milford (hereafter "Milford"), hereby moves that this Honorable Court, pursuant to Fed. R. Civ. P. 56, grant Summary Judgment in favor of Milford dismissing the complaint of the Plaintiff, Grafton and Upton Railroad Company (hereafter "GU").

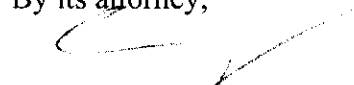
As grounds therefore, Milford states that there are no issues of material fact in dispute and that Milford is entitled to a judgment in its favor as a matter of law for reason that the activities proposed to be undertaken by the Boston Railway Terminal Company (the "BRT") at the Milford property of the GU were and are not, as a matter of law, entitled to any preemptive effect against the enforcement of Milford By-Laws and/or state law and further that the action commenced by GU is moot. In further support of its motion, Milford refers to, and incorporates by this reference, the following:

- (1) *Verified Complaint for Declaratory Relief;*
- (2) *Answer of the Town of Milford;*
- (3) *Memorandum of Law in support of the Defendant Town of Milford's Motion for Summary Judgment;*
- (4) *Affidavit of Larry L. Dunkin;*

- (5) *Exhibits to Affidavit of Larry L. Dunkin;*
- (6) the decision of the Surface Transportation Board (hereafter "STB") in the case of *Town of Milford, MA Petition For Declaratory Order*, STB Finance Docket No. 34444 (August 11, 2004), a copy of which is attached to the Memorandum of Milford as Exhibit "A".
- (7) the decision of the STB in the case of *H&M International Transportation, Inc.*, STB Finance Docket No. 34277 (November 10, 2003), a copy of which is attached to the Memorandum of Milford as Exhibit "B".
- (8) the decision of the STB in the case of *Hi-Tech Trans, LLC*, STB Docket No. 34192 (August 14, 2003), a copy of which is attached to the Memorandum of Milford as Exhibit "C".
- (9) the decision of the STB in the case of *Fletcher Granite Company, LLC – Petition For Declaratory Order*, STB Finance Docket No. 34020 (June 25, 2001), a copy of which is attached to the Memorandum of Milford as Exhibit "D".
- (10) the decision of the STB in the case of *Borough of Riverdale – Petition For Declaratory Order*, STB Finance Docket No. 33466 (September 9, 1999), a copy of which is attached to the Memorandum of Milford as Exhibit "E".

WHEREFORE, for all of the above stated reasons, and the reasons set forth in its *Memorandum of Law*, the Town of Milford requests that this Honorable Court enter judgment dismissing the Plaintiff's complaint.

Respectfully submitted,
Town of Milford
By its attorney,



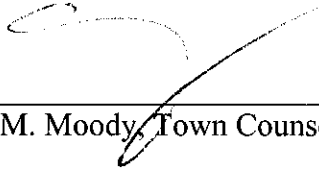
Gerald M. Moody, Town Counsel
Town Hall – 52 Main Street
Milford, MA 01757
BBO No.: 352380
(508) 634-2302

Dated: March 7, 2005

CERTIFICATE OF SERVICE

I Gerald M. Moody, Attorney for the Defendant Town of Milford in the above matter hereby certify that I have this 7th day of March 2005 served the within Motion of the Defendant Town of Milford For Summary Judgment upon Counsel for the Plaintiff addressed as follows:

Michael B. Flynn, Esq.
Richard A. Davidson, Jr., Esq.
Flynn & Associates
189 State Street, 6th Floor
Boston, MA 02109



Gerald M. Moody, Town Counsel